

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Romaro Kincaid,)	CASE NO. 1:09 CV 00890
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
vs.)	
)	
Robert Welch, Warden,)	<u>Memorandum of Opinion and Order</u>
)	
Respondent.)	

INTRODUCTION

This matter is before the Court upon petitioner's Motion for a New Trial or to Alter and Amend Judgment (Doc. 14). This relates to a petition for habeas corpus. For the following reasons, the motion is DENIED.

ANALYSIS

Petitioner asserts that the Court erred in denying habeas relief with respect to Ground One of his petition, specifically on petitioner's claim that it was improper and prejudicial for the Magistrate Judge to issue a recommendation on the sufficiency of the evidence claim when the Magistrate Judge did not have a trial transcript. The Court disagrees. Petitioner presents no new arguments or law but merely repeats his objection. The Court set forth its reasoning fully in the

Memorandum of Opinion and Order adopting the Magistrate's Report and Recommendation. Because the state court summarized the trial testimony and the relevant facts, and petitioner's own version of the facts did not conflict with the state court's version, it was unnecessary for the Court to examine trial records to adjudicate petitioner's claim. Thus, habeas relief is not warranted.

CONCLUSION

For the foregoing reasons, petitioner's Motion for a New Trial or to Alter and Amend Judgment is DENIED. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 1/14/10